

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL ASBERRY,

NO. CIV. S-01-2343 LKK/PAN

Plaintiff,

v.

O R D E R

CITY OF SACRAMENTO/SANITATION
DEPARTMENT,

Defendant.

This order addresses a number of objections the parties have raised which bear on the pretrial order and trial in the above-captioned cases. Below, I address those objections.

First, the court is in receipt of the parties' correspondences and objections regarding exhibits to be presented during the trial¹

¹ According to plaintiff, defendant has deleted 53 of its exhibits and added several which were not produced in discovery. Defendant, on the other hand, contends that plaintiff has delivered twenty-three exhibits to defendant which he intends to introduce at trial but were not included in the court's order.

1 The court hereby ORDERS that the parties exchange with each other
2 within ten (10) days a new exhibit list for both Asberry I and
3 Asberry II which lists all the prior exhibits and the new exhibits
4 which they intend to use at trial. Both parties shall file these
5 exhibit lists with the court at that time. Both parties shall also
6 resubmit to each other their exhibits, indexed and identified as
7 they are ordered in the exhibit lists, within ten (10) days of this
8 order. On June 6, 2006, at 10:30 a.m., the parties shall appear
9 before the court, at which time the court will take up any
10 objections the parties have raised with regard to exhibits. The
11 court will amend its final pretrial order accordingly.

12 Second, plaintiff objects to defendant's addition of two
13 witnesses to its witness list in the pretrial order, Lori Swinehart
14 and Patty Vasquez. Plaintiff contends that he is prejudiced by
15 this augmentation because he has not had the opportunity to depose
16 or discover the alleged percipient knowledge of the newly listed
17 witnesses. Plaintiff's contention is well-taken. The court hereby
18 ORDERS defendant to file a motion to amend or to augment the pre-
19 trial order within five (5) days of this order. Plaintiff shall
20 file a response within five (5) days thereafter.

21 Third, defendant proposes to augment the pretrial order by
22 adding fourteen affirmative defenses. Defendant previously
23 requested that the court include these defenses in its final
24 pretrial order. In a June 18, 2003 order, however, the court
25 explained to defendant that the court would not consider
26 affirmative defenses which the court has already ruled in

1 defendant's favor. The court also articulated that it has already
2 ordered briefing on all defenses, and thus finds it unnecessary to
3 list each theory in the pretrial order. Accordingly, the court
4 will not amend the pretrial order with respect to defendant's
5 affirmative defenses.

6 Finally, due to scheduling conflicts, the trial is CONTINUED
7 to June 13, 2006 at 10:30 a.m.

8 IT IS SO ORDERED.

9 DATED: April 28, 2006.

10 /s/Lawrence K. Karlton
11 LAWRENCE K. KARLTON
12 SENIOR JUDGE
13 UNITED STATES DISTRICT COURT
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